

1 DON HOWARTH, Bar No. 53783  
dhowarth@howarth-smith.com  
2 PADRAIC J. GLASPY, Bar No. 259563  
pglaspy@howarth-smith.com  
3 HOWARTH & SMITH  
523 West Sixth Street, Suite 728  
4 Los Angeles, California 90014  
Telephone: (213) 955-9400  
5 Facsimile: (213) 622-0791

6 Attorneys for Plaintiff  
SPITZ TECHNOLOGIES  
7 CORPORATION

JOHN B. SGANGA, JR., Bar No. 116211  
john.sganga@knobbe.com  
SHEILA N. SWAROOP, Bar No. 203476  
sheila.swaroop@knobbe.com  
KNOBBE, MARTENS, OLSON & BEAR,  
LLP  
2040 Main Street, Fourteenth Floor  
Irvine, California 92614  
Telephone: (949) 760-0404  
Facsimile: (949) 760-9502

Attorneys for Defendant  
NOBEL BIOCARE USA LLC

8

9 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10  
11 SPITZ TECHNOLOGIES  
12 CORPORATION,

13 Plaintiff,

14 v.

15 NOBEL BIOCARE USA, LLC,

16 Defendant.

17 Case No. 8:17-cv-00660-JVS-JCG

18 Hon. James V. Selna

19  
20 **STIPULATION AND [PROPOSED]**  
**ORDER TO MODIFY**  
**PROTECTIVE ORDER**

21  
22 AND RELATED COUNTER-ACTION

1                   NOBEL BIOCARE USA, LLC (“Nobel”), on the one hand, and SPITZ  
2 TECHNOLOGIES CORPORATION (“Spitz”), on the other hand, by and through  
3 their counsel below, hereby stipulate as follows:

4                   WHEREAS, on or about April 11, 2017, Spitz filed a lawsuit in this Court  
5 against Nobel as the above-entitled action (the “Nobel Action”);

6                   WHEREAS, Spitz was represented in the Nobel Action by the law firm  
7 Michelman & Robinson, LLP (“Michelman”) and by the Quinn Emanuel law firm  
8 (“Quinn”);

9                   WHEREAS, this Court entered a Protective Order in this case on or about July  
10 6, 2017, at Docket No. 28 (the “Protective Order”), which is incorporated by  
11 reference herein;

12                   WHEREAS, the Protective Order governed, in part, the protection of certain  
13 documents produced in the course of the Nobel Action that were designated by the  
14 parties as “CONFIDENTIAL BUSINESS INFORMATION”, and the use and  
15 disclosure of documents and information so designated (“Protected Material”) was  
16 restricted, including the restriction that said documents could only be used or  
17 disclosed “only for prosecuting, defending, or attempting to settle this Action” and  
18 that such documents “may be disclosed only to the categories of persons and under  
19 the conditions described in this Order” [Dkt. 28 at ¶ 7.1];

20                   WHEREAS, in the course of the Nobel Action, the parties did in fact produce  
21 documents that were designated by the party producing them as “CONFIDENTIAL

1 BUSINESS INFORMATION" under the Protective Order;

2 WHEREAS, the Nobel Action was dismissed on or about September 6, 2019;

3 WHEREAS, after the resolution of the Nobel Action, Spitz has advised that a  
4 potential dispute arose between Spitz and Michelman relating to this litigation;

5 WHEREAS, Spitz has advised that, in the course of assessing its potential  
6 claims against Michelman, Spitz made a request for, and Michelman purported to  
7 produce its client file for the Nobel Action, which file included documents produced  
8 under and subject to the protections of the Protective Order entered by the Court in  
9 this litigation;

10 WHEREAS, the terms of the Protective Order remain in full force and effect as  
11 to the documents and information that were produced pursuant to it;

12 WHEREAS, Spitz has advised that it is represented in assessing its potential  
13 claims by the law firm Howarth & Smith;

14 WHEREAS, under the terms of the Court's Protective Order, neither Howarth  
15 & Smith, nor any experts retained thereby, nor any mediator, arbitrator, or Court who  
16 may preside over the litigation of the dispute between Spitz and Michelman are  
17 permitted to obtain and review the documents designated under the Protective Order  
18 because any disclosure or use of the documents would not be in connection with the  
19 Nobel Action, and because such parties do not fit into the categories of individuals  
20 permitted to view such documents under the Protective Order;

21 WHEREAS, Spitz has advised that documents designated by Nobel as

1 Protected Material are part of the client file owned by Spitz and are relevant to  
2 assessment of the Spitz claims and to the issues in the dispute between Spitz and  
3 Michelman;

4 WHEREAS, in order to minimize burden to Nobel, the parties to the Court's  
5 Protective Order and their respective counsel, agree that the terms of the prior  
6 Protective Order should be modified to permit the use of documents designated by  
7 Nobel as Protected Material in connection with Spitz's potential claims against  
8 Michelman;

9 WHEREAS, federal courts have jurisdiction to modify protective orders that  
10 they issue where they are still in force and effect, even after a judgment is final on a  
11 case. *See, e.g., Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 782–783 (1st Cir.  
12 1988) (“we find that, because the protective order was still in effect, the district court  
13 had the power to make postjudgment modifications to the protective order”); *FDIC v. Ernst & Ernst*, 677 F.2d 230 232 (2d Cir.1982); *Krause v. Rhodes*, 671 F.2d 212 (6th  
14 Cir.), *cert. denied*, 459 U.S. 823, 103 S.Ct. 54 (1982); *United States v. GAF Corp.*,  
15 596 F.2d 10, 16 (2d Cir.1979); *American Telephone & Telegraph Co. v. Grady*, 594  
16 F.2d 594, 596–97 (7th Cir.1978), *cert. denied*, 440 U.S. 971, 99 S.Ct. 1533 (1979);  
17 *Olympic Refining Co. v. Carter*, 332 F.2d 260, 265–66 (9th Cir.), *cert. denied*, 379  
18 U.S. 900 (1964); Marcus, *Myth and Reality in Protective Order Litigation*, 69 Cornell  
19 L. Rev. 1, 41–53 (1983); Note, *Nonparty Access to Discovery Materials in Federal*  
20 *Court*, 94 Harv. L. Rev. 1085, 1091–96 (1981); and

1           WHEREAS, good cause exists for this Court to enter the modifications to the  
2 Protective Order [Dkt. 28], incorporated herein.

3           NOW, THEREFORE THE UNDERSIGNED COUNSEL AND PARTIES  
4 HEREBY STIPULATE AS FOLLOWS:

5           1.       The July 6, 2017 Protective Order entered by this Court in the Nobel  
6 Action [Dkt. 28] shall be amended and modified as provided herein below to allow  
7 for the use of documents designated by Nobel as containing Protected Material and  
8 produced thereunder in connection with the dispute between Spitz and Michelman,  
9 provided that Nobel is provided with notice of and has the ability to approve of  
10 disclosure of its Protected Material prior to such disclosure being made, as set forth  
11 below.

12           2.       All provisions of the Court's prior Protective Order not amended,  
13 modified, or inconsistent with the provisions herein shall remain in full force and  
14 effect.

15           3.       Information and/or documents that were designated by Nobel under the  
16 Protective Order as "CONFIDENTIAL BUSINESS INFORMATION" may be used  
17 for the limited purpose of evaluating, assessing, prosecuting, defending, or attempting  
18 to settle the dispute between Spitz and Michelman. Such use of Protected Material  
19 designated by Nobel shall be limited to the categories of persons and under the  
20 conditions described in the Protective Order and this Stipulation and Modification.

21           ///

1           4. Information and/or Documents that were designated under the Protective  
2 Order as “CONFIDENTIAL BUSINESS INFORMATION” may be disclosed to the  
3 following persons:

4           (a) outside counsel representing Spitz (the Howarth & Smith firm),  
5           Michelman, and any insurers thereof, including all paralegal assistants,  
6           secretarial and stenographic and clerical employees working under the  
7           supervision of such counsel, which outside counsel (with the exception  
8           of the Howarth & Smith firm identified above) shall be identified to  
9           Nobel prior to the disclosure of any CONFIDENTIAL BUSINESS  
10           INFORMATION, and provided such outside counsel that has not signed  
11           this Amendment executes an Agreement attached hereto as Exhibit A;  
12           (b) court reporters, interpreters, translators, copy services, graphic support  
13           services, document imaging services, and database/coding services  
14           retained by such counsel, provided these individuals or an appropriate  
15           company official with authority to do so on behalf of the company  
16           executes an Agreement attached hereto as Exhibit A;  
17           (c) experts or consultants (i) retained by any attorney described in Paragraph  
18           4(a) to assist in connection with the dispute between Spitz and  
19           Michelman, (ii) who is not a current employee of Spitz or Michelman,  
20           (iii) who has no current or prior relationship with any competitor in the  
21           dental implant industry; and (iv) provided such expert or consultant

1 executes an Agreement attached to the Protective Order as Exhibit A and  
2 provides to Nobel a copy of his or her current CV, business address,  
3 business title, business or profession, the existence of any previous or  
4 current relationship (personal or professional) with Nobel or any of its  
5 competitors, and all companies for which the expert or consultant has  
6 consulted, advised, been employed by, or been a member of any  
7 advisory or governing body for, within last four (4) years, and receives  
8 confirmation that Nobel has no objection to disclosure of its Protected  
9 Material to such expert or consultant prior to any such disclosure being  
10 made;

11 (d) a person who prepared, received, or reviewed the Protected Material  
12 prior to, or independent from, its production in the Nobel Action;

13 (e) a person, such as an attorney from the Michelman firm, who was  
14 authorized to view the Protected Material in the course of pursuing or  
15 defending the claims in the Nobel Action, provided that, prior to viewing  
16 any Protected Material in connection with the dispute between Spitz and  
17 Michelman, such an individual is identified to the opposing party and to  
18 Nobel and executes an Agreement attached to the Protective Order as  
19 Exhibit A;

20 (f) during depositions and preparation for depositions, a deposition witness  
21 who is a current or former employee, officer, agent, contractor and/or

consultant of the party that produced the applicable document(s) or who appears to have knowledge of the contents of the document designated “**CONFIDENTIAL BUSINESS INFORMATION**” or the specific events, transactions, discussions, or date reflected in the document, provided such witness executes an Agreement attached to the Protective Order as Exhibit A;

- (g) any private mediators employed by the parties in connection with the dispute, provided any such person executes the Agreement attached to the Protective Order as Exhibit A; and
- (h) any Court and/or arbitrator that presides over any proceedings in connection with the dispute between Spitz and Michelman, and their respective staff.

13 5. Within sixty (60) days of the resolution of the dispute between Spitz and  
14 Michelman, and subject to the exceptions in paragraph 13 of the Protective Order,  
15 Spitz and Michelman will provide written confirmation to Nobel that all Protected  
16 Material exchanged in connection with the dispute has been destroyed. Final  
17 disposition shall be deemed to be the later of (1) the last payment made pursuant to  
18 any settlement between Spitz and Michelman of all claims by Spitz relating to  
19 Michelman's representation in the Nobel Action; (2) the dismissal of all claims and  
20 defenses in any formal lawsuit filed by Spitz; (3) final judgment and completion or  
21 exhaustion of all appeals, rehearings, remands, trials, or reviews in any formal lawsuit

1 filed by Spitz; and (4) the expiration of the statute of limitations on any claims  
2 belonging to Spitz against Michelman.

3 6. Without written permission from the designating party or a court order  
4 secured after appropriate notice to all interested persons, a party may not file any  
5 Protected Material in any public forum or record prior to the trial of any dispute  
6 between Spitz and Michelman, without first giving reasonable notice to the  
7 designating party and attempting to file such material under seal. A Party that seeks  
8 to file under seal in any action brought by Spitz against Michelman any Protected  
9 Material must comply with the applicable rules and procedures as govern any such  
10 action. If the request to file any Nobel Protected Material under seal is denied by the  
11 court in any such action, then the Party shall immediately notify Nobel and shall not  
12 file the Protected Material in the public record until Nobel has had the opportunity to  
13 pursue appropriate relief. Nobel shall have thirty (30) days to apply to the relevant  
14 court for relief. If no such application or motion is brought in that time, the Nobel  
15 Protected Material may be filed in the public record. If Nobel does apply to the  
16 relevant court in that time period, no Nobel Protected Material shall be filed in the  
17 public record until the court rules on any application or motion brought by Nobel.

18 7. The use at trial of any Protected Material produced and designated  
19 pursuant to the Protective Order shall be governed by a separate order from the court  
20 that hears the dispute between Spitz and Michelman. Spitz shall immediately notify  
21 Nobel if it initiates an action in any court regarding its dispute with Michelman. Any

1 party seeking to restrict the use of any Protected Material at the trial of any such  
2 action shall apply to the court to apply whatever protection it deems necessary. In  
3 order to give any designating party the opportunity to apply for protection of its  
4 Protected Material at trial, any party seeking to introduce such Protected Material  
5 shall notify the relevant designating party by email no later than fifteen calendar days  
6 prior to the anticipated use of the Protected Material and provide notice to the  
7 designating party of its intent to use the Protected Material. Notice to Nobel shall be  
8 provided to the following:

Robert Schwimmer: Robert.Schwimmer@envistaco.com

Gail Katz: Gail.Katz@envistaco.com

John Sganga: John.Sganga@knobbe.com

Sheila Swaroop: Sheila.Swaroop@knobbe.com

## 13 IT IS SO STIPULATED.

14 Dated: March 19, 2021 HOWARTH & SMITH

HOWARTH & SMITH

*/s/ Don Howard*

Attorneys for SPITZ TECHNOLOGIES  
CORPORATION

18 || Dated: March 19, 2021

## KNOBBE MARTENS

19

By: /s/ Sheila Swaroop

Sheila Swaroop

Attorneys for NOBEL BIOCARE USA,  
LLC

**Attestation of Filing**

2 I, Don Howarth, am the ECF User whose ID and password are being used to  
3 file this Stipulation and [Proposed] Order to Modify Protective Order. In compliance  
4 with Local Rule 5-4.3.4, I hereby attest that the above signatories have concurred in  
5 this filing's content and have authorized this filing.

## **Stipulated Protective Order**

8 Good cause appearing therefore, the Court hereby Orders that the Above  
9 Modifications to the Protective Order issued in the above-entitled case are granted.  
10 All provisions not inconsistent with the above modifications shall remain in full force  
and effect.

## IT IS SO ORDERED.

Dated: March 25, 2021

Honorable James V. Selna  
United States District Judge

## **EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, of \_\_\_\_\_, declare under  
penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the United States District Court for the Central  
District of California on in the case of *Spitz Technologies Corp., v. Nobel Biocare*  
*USA LLC et al.*, Case No. 8:17-cv-00660-JVS-JCG, and the modification thereto. I  
agree to comply with and to be bound by all the terms of this Stipulated Protective  
Order, as modified, and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt.

11 I solemnly promise that I will not disclose in any manner any information or  
12 item that is subject to this Stipulated Protective Order to any person or entity except  
13 in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court  
15 for the Central District of California for the purpose of enforcing the terms of this  
16 Stipulated Protective Order, even if such enforcement proceedings occur after  
17 termination of this action. I hereby appoint \_\_\_\_\_ of  
18 \_\_\_\_\_ as my California agent for service of process in connection  
19 with this action or any proceedings related to enforcement of this Stipulated  
20 Protective Order, and its modifications.

21 || //

1 Date: \_\_\_\_\_

2 City and State where sworn and signed:  
3 \_\_\_\_\_

4 Printed name: \_\_\_\_\_

5 Signature: \_\_\_\_\_

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21